

July 21, 1998

## Clinton's False Step on Federalism

### States, Localities Call on President to Withdraw Executive Order

On May 14, 1998, President Clinton signed an executive order on federalism (No. 13083) that will replace the precedent-setting order that was signed in 1987 by President Ronald Reagan (No. 12612). Clinton's order will alter the relationship between the Executive Branch of the Federal Government and the States and localities — and the States and localities are not happy about it. The following seven organizations, representing elected leaders at all levels of State and local government, have written the President and asked him to withdraw his order:

National Governors' Association  
National Conference of State Legislatures  
Council of State Governments  
National Association of Counties

U.S. Conference of Mayors  
National League of Cities  
International City/County  
Management Association

Federalism is that fundamental principle that divides governmental powers between the national government and the States. It is closely linked to the constitutional fact that our national government is a government of enumerated powers. Under the Constitution, powers which are not delegated to the national government are reserved to the States or the people (see the Tenth Amendment). And why did the Framers choose a federal system? Because, as President Reagan's executive order put it, "Federalism is rooted in the knowledge that our political liberties are best assured by limiting the size and scope of the national government."

It is no wonder, therefore, that the organizations listed above have asked President Clinton to withdraw his new executive order. In their letter of July 17, 1998, they said:

"We are writing on behalf of the nation's elected state and local government leaders to request that you withdraw Executive Order 13083. We urge this action to provide for meaningful consultations with state and local officials not on E.O. 13083, but on whether any changes ought to be considered with respect to [Executive Order 12612]. No state [or] local government official was consulted in the drafting of E.O. 13083. In contrast, this administration fully engaged state and local officials and their associations in the drafting of [Mr. Clinton's order of October 26, 1993 on intergovernmental partnership].

"While we appreciate the offer by your administration to extend the comment period by 90 days, we feel that Executive Order 13083 so seriously erodes federalism that we must request its withdrawal."

Congressman David M. McIntosh (R-IN-2) also has written President Clinton. The Congressman is an expert in this area. He chairs a subcommittee of the House Committee on Government Reform and Oversight, and during the Reagan Administration he worked at OMB and the Department of Justice on related matters. His letter of June 8, 1998, said:

"First [Mr. President], you stripped the most basic protection accorded the states, the preparation of a Federalism Assessment, if warranted, for federal agency rulemaking, which was required by section 6 of E.O. 12612. Such an assessment requires an analysis of 'the extent to which the policy imposes additional costs or burdens on the states, including the likely source of funding for the states and the ability of the states to fulfill the purposes of the policy.' Under your new order, the states could easily be burdened with undue costs or with a mandate to carry out a policy that they are not capable of carrying out.

"Second, regarding Section 7 of E.O. 12612, you revoked the substantive requirement for all regulatory and legislative proposals to 'identify proposed regulatory and statutory provisions that have significant federalism implications and [to] address any substantial federalism concerns.' Don't you think that the federal government should be required to analyze fully and address federalism concerns associated with proposed legislation or regulations?

"Third, Section 3 of your most recent order completely reverses the thrust of section 3 of E.O. 12612. Under E.O. 12612, the federal government was required to '[r]efrain, to the maximum extent possible, from establishing uniform, national standards for programs and, when possible, defer to the States to establish standards.' Your order requires no restraint or deference to the states; it only requires some justification of the need for a national standard.

"Finally [Mr. President], you openly encourage federal agencies to intrude in state affairs. Your order revokes E.O. 12612's preemption provisions that directed agencies to 'preempt State law only when the statute contains an express preemption provision or there is some other firm and palpable evidence compelling the conclusion that the Congress intended preemption of State law, or when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute' and '[a]ny regulatory preemption of State law shall be restricted to the minimum level necessary to achieve the objectives of the statute' (emphasis supplied). The elimination of these requirements for preemption could subject the states to unprecedented federal regulatory intervention.

"Your executive order could wreak havoc on the balance of power envisioned by the Constitution between the states and the federal government. What current circumstance justifies your abandoning the states and exposing them to the exercise of the power of the federal government without consideration of the states' unique role and responsibility in the governance of the people?"

The President's executive order on federalism also has raised concerns among millions of American voters. It is not just governors and mayors and Congressmen who are troubled.

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